

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRANK CRESTA, LOUISA CRESTA, CATH-
ARINA POLOSTRINI, ROSINA PAR-
AVAGNA, ELIZA GOTELLI and TERESA
CAPURRO,

Petitioners,

vs.

T. V. MAXWELL, C. K. McINTOSH and J. L.
RADOVICH, Assignees,

Respondents.

In the Matter of the Estate of DOMINGO GHIRA-
DELLI and ANGELO MANGINI, Copart-
ners Transacting Business Under the Firm
Name of D. GHIRADELLI & CO., and In-
dividually, Bankrupts.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1893, to Revise, in Matter of Law,
a Certain Order of the United States District
Court for the Northern District of
California, First Division.

Filed

OCT 13 1915

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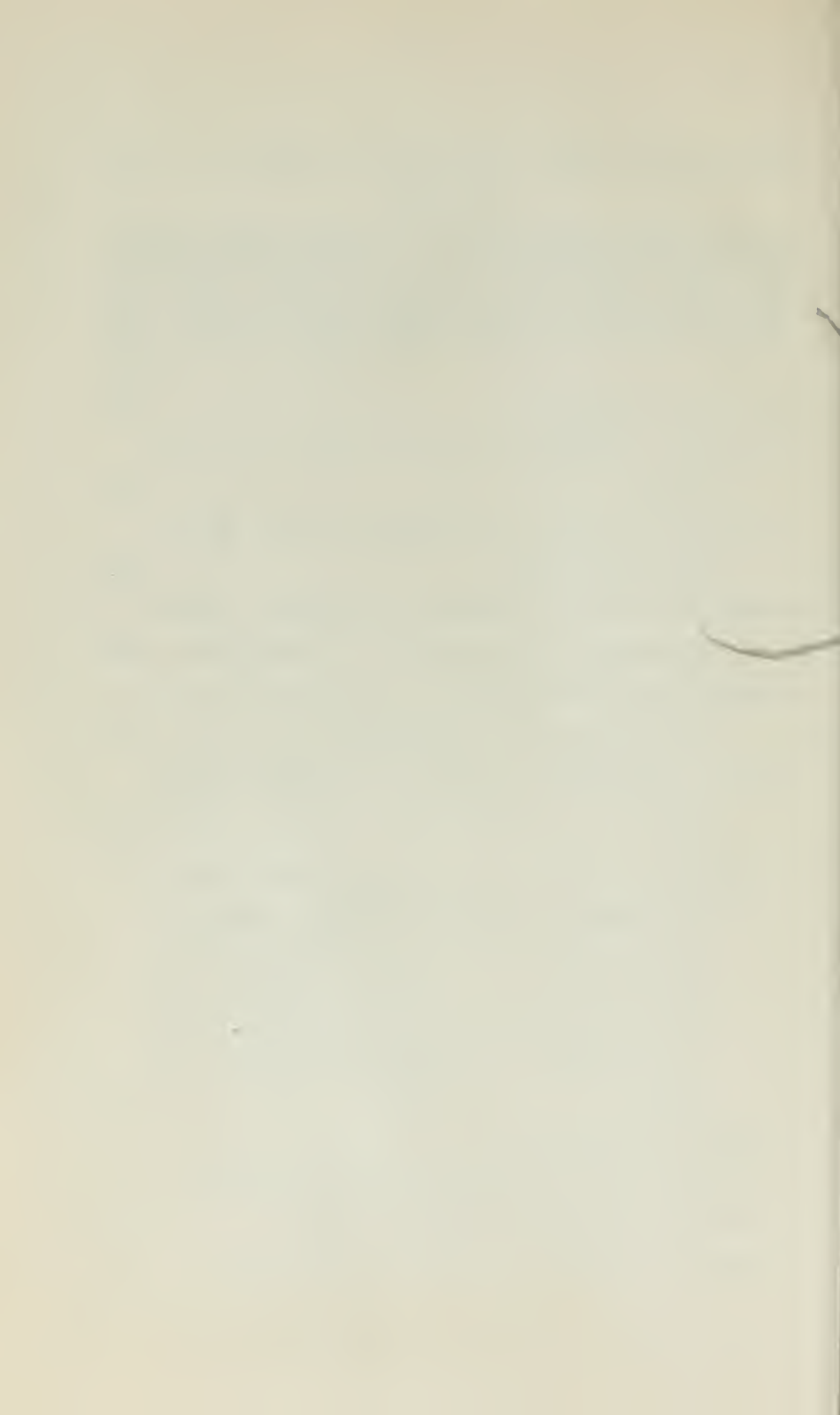
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within

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*United States Circuit Court of Appeals for the
Ninth Circuit.*

In the Matter of the Estate of DOMINGO GHIRADELLI and ANGELO MANGINI, Co-partners Transacting Business Under the Firm Name of D. GHIRADELLI & CO., and Individually, in Bankruptcy.

Petition for Revision.

To the Honorable the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Your Petitioners Frank Cresta, Louisa Cresta, Catharina Polostrini, Rosina Paravagna, Eliza Gottelli and Teresa Capurro state and allege as follows:

That they are the heirs and devisees of one Tomaso Cresta, deceased; that said Tomaso Cresta died on the — day of December, 1890, at the City and County of San Francisco, State of California, while a resident thereof;

That the will of said Tomaso Cresta was duly probated in the Superior Court for the said City and County of San Francisco, and letters testamentary duly issued to Madalina Cresta as the executrix of said will on the 7th day of January, 1891; that said Madalina Cresta resigned as such executrix on the — day of November, 1894, and A. C. Freese, the Public Administrator of said City and County, was duly appointed administrator of the estate of said Tomaso Cresta with the will annexed and letters of administration of said estate with the will annexed were duly issued to said A. C. Freese under the seal of said Court on the 17th day of December, 1894; that A. C.

Freese duly continued and completed the administration of said Estate of Tomasa Cresta, deceased; that said A. C. Freese, as such administrator made and filed his final account in said Court, together with his petition for final distribution of said estate on the 12th day of September, 1900, and, on the 24th day of September, 1900, the said final account, by order of said Court duly entered, was settled and the residue of said estate was, by the decree of said Court, duly made and entered on September 24th, 1900, distributed to your petitioners and to Joseph Cresta in equal portions;

That some time prior to January 1st, 1880, the said Domingo Ghiradelli and Angelo Mangini, partners under the firm name of D. Ghiradelli & Co. had been, by the order and decree of the United States District Court for the Northern District of California, duly made, adjudicated bankrupts; that said Tomaso Cresta was a creditor of said D. Ghiradelli & Co., and he duly proved his debt against the said bankrupts in the sum of \$1050.00; that the first dividend declared in said estate in bankruptcy was declared before the death of said Tomaso Cresta and paid to him by the assignees of said bankrupts; that the second dividend in said bankrupts' estate was declared August 31st, 1910, and the amount apportioned to the said claim of Tomaso Cresta was the sum of \$252.00; and a third dividend was declared June 1st, 1911, and the amount thereof apportioned to the said claim of Tomaso Cresta was the sum of \$78.00;

That the assignees of said bankrupts carelessly and wrongfully issued their check for the said second and third dividends respectively payable to Tomaso Cresta or order and delivered the same to a person or persons not entitled thereto, and thereafter the said checks were paid to a person or persons not entitled thereto;

That the petitioners had no information or knowledge that said Tomaso Cresta was or had been a creditor of said bankrupts, or that any dividends had been declared in his favor prior to the — day of September, 1912;

The petitioners further allege that their verified petition, alleging the foregoing facts, was, on the 2d day of May, 1914, filed in the clerk's office of the United States District Court for the Northern District of California, First Division, in which the said bankrupts' estate was still pending and unsettled; the prayer of said petition was that the assignees of said bankrupts be ordered to show cause why they should not be ordered to pay to petitioners their proportional part of the aggregate sum of the said two dividends No. 2 and No. 3, to wit, \$330.00;

That the order of said District Court requiring said assignees to show cause as aforesaid was duly issued and served upon said assignees, together with a copy of the petitioners' said petition; that the said assignees, on May 9th, 1914, made, served and filed their answer to petitioners' said petition;

That thereafter, to wit, on the — day of Sept., 1914, the matters of law and fact raised by said petition and said answer thereto were, by the order of

said District Court, referred to A. B. Kreft as the Register in said bankrupts' estate, to examine, enquire into and report thereon to said District Court, together with other matters of controversy then pending in said District Court in the said bankrupts' estate;

That, when said matters came to hearing before said Register as Referee, the said petitioners interposed a general demurrer to the answer of said assignees; that the Register overruled the said demurrer, and thereupon the said matters were submitted to said Register upon the facts stated in the said petition of your petitioners and in the said answer thereto of the said assignees;

That the said Register, on the 4th day of February, 1915, made and filed in said District Court his report, wherein he reported and decided that the said assignees "could properly deliver a check" as alleged in the answer of the said assignees, and recommend that the petition of petitioners be denied; that your petitioners, on the 13th day of February, 1915, made and filed in said District Court, their objections to the said report of said Register as Referee; that said objections to said report were argued by the attorneys for the respective parties and submitted to said Court for decision;

That thereafter, on March 26th, 1915, the said District Court made and entered its Order whereby the said report of said Register was approved;

Your petitioners state that they are advised and verily believe that the said report of the Register is erroneous and contrary to the law and that said

order of the District Court is contrary to and against the law, and that your petitioners are aggrieved thereby;

WHEREFORE your petitioners respectfully pray that the said report of the Register and the said order of the District Court approving said report be reviewed and revised by your Honors according to the merits of your petitioners' contentions; and that, by the Order and Decree of this Court the order of said District Court approving the said report of the Register be reversed and the objections of petitioners to said report of the Register be sustained; and your Petitioners pray for such other and further relief as they may be entitled to under the law and the facts.

T. Z. BLAKEMAN,
Attorney for Petitioners.

State of California,
City and County of San Francisco,—ss.

T. Z. Blakeman, being duly sworn, deposes and says: That he is the attorney for the petitioners in the foregoing petition; that the facts stated therein are within his personal knowledge, and the same are true.

T. Z. BLAKEMAN,

Subscribed and sworn to before me this 5th day of April, 1915.

[Seal] EDITH W. BURNHAM,
Notary Public in and for the City and County of San Francisco, State of California.

Received copy of the within Petition for Review,
this 5th Apl., 1915.

T. J. MIGLE,

Attorneys for Assignees.

[Endorsed]: No. 2597. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Estate of Domingo Ghiradelli and Angelo Mangini, Bankrupts, in Bankruptcy. Petition for Revision of Certain Orders of the United States District Court for the Northern District of California. Filed Apr. 5, 1915, Frank D. Monckton, Clerk U. S. Circuit Court of Appeals, for the Ninth Circuit. By
———— Deputy Clerk.

[Endorsed]: No. 2597. United States Circuit Court of Appeals for the Ninth Circuit. Frank Cresta, Louisa Cresta, Catharina Polostrini, Rosina Paravagna, Eliza Gotelli and Teresa Capurro, Petitioners, vs. T. V. Maxwell, C. K. McIntosh and J. L. Radovich, Assignees, Respondents. In the Matter of the Estate of Domingo Ghiradelli and Angelo Mangini, Copartners Transacting Business Under the Firm Name of D. Ghiradelli & Co., and Individually, Bankrupts. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the

Northern District of California, First Division.

Filed April 5, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRANK CRESTA, LOUISA CRESTA, CATH-
ARINA POLOSTRINI, ROSINA PAR-
AVAGNA, ELIZA GOTELLI and TERESA
CAPURRO,

Petitioners,

vs.

T. V. MAXWELL, C. K. McINTOSH and J. L.
RADOVICH, Assignees,

Respondents.

In the Matter of the Estate of DOMINGO GHIRA-
DELLI and ANGELO MANGINI, Copart-
ners Transacting Business Under the Firm
Name of D. GHIRADELLI & CO., and In-
dividually, Bankrupts.

TRANSCRIPT OF RECORD IN SUPPORT OF
PETITION FOR REVISION

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of Law,
a Certain Order of the United States District
Court for the Northern District of
California, First Division.

In the District Court of the United States, in and for the Northern District of California, First Division.

In the Matter of the Estate of DOMINGO GHIRARDELLI and ANGELO MANGINI, Co-partners Trading Under the Firm Name of D. GHIRARDELLI & CO., Bankrupts.

Amended Praecipe.

To the Clerk of said Court:

Sir: Please make up and certify, for use in the United States Circuit Court of Appeals for the Ninth Circuit, on the Petition for Revision by Frank Cresta et al., heretofore filed in said Circuit Court of Appeals, the following specified records and files in the matter of said bankrupts' estate, to wit:

1. Petition of Frank Cresta et al. for relief filed April, 1914;
2. The answer of the Assignees of said Bankrupts to said Petition;
3. Demurrer of Petitioners Cresta et al. to said answer of Assignees;
4. Report of Register A. B. Kreft as Referee, filed Feby. 4th, 1915, in so far as said report deals with the Petition of said Cresta et al., to wit, all on page one thereof down to and including the words, "certifies and reports" and all on page 8 of said report and all on page 9 of said report preceding the words, "Unclaimed Dividends";
5. Objections of said Cresta et al., to the report of said Referee filed Feby. 13th, 1915;

6. Minute order of said District Court approving said report of said Referee.

Dated this 17th day of Sept., 1915.

T. Z. BLAKEMAN,

Attorney for Petitioner Frank Cresta et al.

[Endorsed]: Filed Sep. 18, 1915, at 11 o'clock and
— min. A. M. W. B. Maling, Clerk. By Lyle S.
Morris, Deputy Clerk. [[1*]]

*In the District Court of the United States in and for
the Northern District of California.*

No. 726.

In the Matter of the Estate of DOMINGO GHIR-
ARDELLI and ANGELO MANGINI, Co-
partners Transacting Business Under the
Firm Name of D. GHIRARDELLI & CO.,
and Individually, in Bankruptcy.

**Petition for Relief in the Above-entitled Matter by
Catherina Polostrini, Frank Cresta, Rosina
alias Rosie Paravagna, Eliza Gottelli, Louisa
Cresta and Teresa Capurro, and Catharina Pol-
ostrini as the Administratrix of the Estate of
Giovanni Brignoli, Deceased.**

To the Honorable, the District Court of the United
States, in and for the Northern District of
California:

Your petitioners, the said Catherina Polostrini,
Frank Cresta, Rosina, *alias* Rosie, Paravagna, Eliza
Gotelli, Louisa Cresta and Teresa Capurro, and Cath-
arina Polostrini, as the Administratrix of the Estate

of Giovanni Brignoli, deceased, hereby petition the Court for relief in the above-entitled matter, and for cause state as follows:

That the said petitioners and Mary Paganini and Guisppe, alas Joseph, Cresta and Madelina Cresta were the children and heirs at law of Tomaso Cresta at the date of his decease; that the said Tomaso Cresta died in the City and County of San Francisco, being a resident thereof, on the — day of December, 1890; that he left a last will and testament, which was duly admitted to probate in and by the Superior Court of the City and County of San Francisco, State of California, on the 7th day of January, 1891; that the said Madelina Cresta was [2] named in the said will as the executrix thereof, and she was by the said order of Court admitting the said will to probate appointed as executrix of the said will, and, on the 7th day of January, 1891, duly qualified as such executrix and received letters testamentary; that said Madelina Cresta remained such executrix of the will of the said deceased Tomaso Cresta until the — day of November, 1894; that, on the — day of November, 1894, the said Madelina Cresta resigned as such executrix of the will of the said deceased Tomaso Cresta, and her resignation was duly accepted by the said Superior Court after the settlement of her accounts as such executrix;

That A. C. Freese, who was then the public administrator of the said City and County of San Francisco, was, by an order of the said Superior Court duly made and entered on the 17th day of December, 1894, appointed administrator of the estate of said

Tomaso Cresta, deceased, with the will annexed, and Letter of Administration of the said Estate with the will annexed were duly issued under the seal of the said Court to the said A. C. Freese on the 17th day of December, 1894, and the said A. C. Freese continued and remained as such administrator until the administration of the said estate was completed and closed as hereinafter alleged;

That notice to the creditors of the said decedent, Tomaso Cresta, was duly published by the said Madelina Cresta as executrix, and thereafter and at the time when the presentation of claims of creditors against the said deceased had expired, an order of the said Superior Court was duly made in the matter of the said estate of the said deceased on the — day of December, 1892, establishing notice to the creditors of the said deceased;

That the said A. C. Freese, as administrator as aforesaid, [3] on the 12th day of September, 1900, made and filed in the said court in the matter of the said estate of Tomaso Cresta, deceased, his verified final account as such administrator, and filed therewith a petition for the final distribution of the said estate of the said deceased remaining on hand; that the said final account and petition for final distribution came on regularly for hearing by said Court on the 24th day of September, 1900, after due notice given thereof according to law, and the Court thereupon duly made and entered its order and decree settling the said final account and ordering final distribution of all the remaining portion of the said estate of the said deceased Tomaso Cresta; that, by

the terms of the said last will of the said deceased Tomaso Cresta, Madelina Cresta was given a life estate in the real property belonging to the said deceased, and all the rest, residue and remainder of the said estate was, by the decree of final distribution made and entered by the said Superior Court as aforesaid, distributed in equal portions to the children of the said deceased Tomaso Cresta, to wit: Teresa Capurro, Catherina Cresta, now Polostrini, Maria *alias* Mary Paganini, Rosina *alias* Rosie Paravagna, Eliza Cresta, now Gottelli, Louisa Cresta, Frank Cresta, Guisippe *alias* Joseph Cresta, and Giovannia Brignoli, the only child of a deceased daughter of the said Tomaso Cresta, deceased; that said child, Giovanni Brignoli, died soon after the entry of the said decree of final distribution, and one of your petitioners, the said Catherina Polostrini, is now the administratrix of his estate; that the said Catherina Polastrini was, by an order of the said Superior Court of the City and County of San Francisco duly made and entered on the 9th day of July, 1912, appointed administratrix of the estate of the said Giovanni Brignoli, deceased, and letters of administration under the seal of the said Court were duly issued to her as such administratrix, [4] on the 9th day of July, 1912, and she is still the administratrix of the estate of Giovanni Brignoli, deceased.

Your petitioners further state that the said Tomaso Cresta was a creditor of the said Domingo Ghirardelli and Angelo Mangini, and bankrupts herein, and his claim as such creditor was duly proved and allowed against the said bankrupts and their estate

prior to the declaration of the first dividend in the estate of the said bankrupts, and the amount of the said Dividend No. 1, payable to the said Tomaso Cresta, was by him, as your petitioners are informed and believe, collected; that, when Dividends No. 2 and No. 3 in the estate of the said Bankrupts were declared, to wit, Dividend No. 2, August 31st, 1910, and No. 3, June 1st, 1911, the said Tomaso Cresta had long since been deceased as aforesaid; that the proportion of the said Dividend No. 2 on the said debt of the said Tomaso Cresta was \$252.00; that the assignees of the said bankrupts issued their check for the said amount of \$252.00 payable to the order of Tomaso Cresta, and the same was carelessly and without sufficient precaution or inquiry on the part of said assignees of the said bankrupts delivered to a party or parties not entitled thereto and unknown to your petitioners, and the said check for \$252.00 was thereafter paid by the said assignees to a party or parties who were not entitled thereto and who were and are unknown to your petitioners, and your petitioners allege upon their information and belief that because of the negligence and want of proper care and inquiry on the part of the said assignees of the said bankrupts, payment of the said check for \$252.00 was made to a party or parties not entitled thereto.

Your petitioners further state that the proportion of the Dividend No. 3 awarded upon the said debt to the said Tomaso [5] Cresta was \$78.00, and the said assignees of the said bankrupts issued their check for the said amount of \$78.00 payable to Tomaso Cresta or order, and the said assignees care-

lessly and wrongfully, and without proper care or inquiry, delivered the said check for \$78.00 to a person or persons not entitled thereto and thereafter paid the said check carelessly and without proper inquiry to a person or persons not entitled thereto.

Your petitioners state upon their information and belief that the said Guisippe, *alias* Joseph Cresta, was the party who received the money on the two checks aforesaid; that the said Guisippe, *alias* Joseph Cresta died while a resident of the City of Oakland, on the —— day of September, 1912.

Your petitioners state that they had no information or knowledge that the said Tomaso Cresta was or had been a creditor of the said bankrupts, or that any dividend or dividends had been declared in his favor or checks therefor issued as aforesaid until after the date of the death aforesaid of the said Guisippe, *alias* Joseph Cresta; that the said Joseph Cresta, if he were the person who received the said checks for Dividends No. 2 and No. 3 and collected the same, had no right nor authority to receive or collect the same, and the said assignees of the said bankrupts could readily, upon the exercise of proper care and attention on their part, have discovered that neither the said Joseph (Guisippe) Cresta nor anyone, other than all of the said distributees of all the remaining estate of the said Tomaso Cresta, deceased, as aforesaid, had any right or authority to receive or to collect the said checks or either of them.

WHEREFORE, your petitioners pray for an order of Court upon the said assignees of the said bankrupts, requiring them to show cause, at the time

and place appointed by the Court, why they should not be ordered to pay to the petitioners herein [6] their proportionate part as distributees of the estate of Tomaso Cresta, deceased, of the amount of the said checks for Dividends Nos. 2 and 3, aggregating \$330.00; or that the Court will grant the petitioners such further or other order or orders for relief as they may be entitled to in the premises.

T. Z. BLAKEMAN,
Attorney for Petitioners.

State of California,
City and County of San Francisco,—ss.

T. Z. Blakeman, being duly sworn, deposes and says: That he is the attorney for the said petitioners and has prepared the foregoing petition and has knowledge of its contents; that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and that, as to those matters, he believes it to be true; that, as Attorney for the said petitioners since the 1st day of January, 1912, in matters relating to the partition among the said petitioners and other heirs of the said Tomaso Cresta, deceased, of the real estate situate in the said City and County of San Francisco belonging to the estate of the said deceased, Tomaso Cresta, he obtained knowledge of the facts set forth in the foregoing petition.

T. Z. BLAKEMAN.

Sworn to before me, this 1st day of May, 1914.

[Seal]

LYLE S. MORRIS,

Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed May 1, 1914. At 4 o'clock and 30 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [7]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. 726.

In the Matter of the Estate of DOMINGO GHIRARDELLI and ANGELO MANGINI, Copartners Transacting Business under the Firm Name of D. GHIRADELLI & CO., and Individually in Bankruptcy.

Answer to Petition of Frank Cresta et al. for relief.

Now come T. V. Maxwell, C. K. McIntosh and J. L. Radovich, assignees in the above-entitled matter and answering the petition of Frank Cresta, et al, hereby show;

That the above-entitled matter is pending in this Honorable Court by virtue and authority of an act of the Congress of the United States duly enacted in 1868;

That under the terms of said act said T. V. Maxwell, C. K. McIntosh and J. L. Radovich are the duly appointed, acting and constituted assignees of the above-named bankrupts;

That under and by virtue of the provisions of said

act, it is the duty of said assignees to reduce all the property coming to their hands from the estate of said bankrupts, to money and thereafter for the Register in Bankruptcy and the creditors of said bankrupts to order such dividends in favor of the creditors as the funds on hand are sufficient to pay;

That Milton J. Green was on the 31st day of August, 1910, the duly appointed, constituted and acting Register in Bankruptcy under the above-mentioned law of Congress in the above-entitled matter;

That on said day a dividend of twenty-four (24) per cent was declared at a meeting of the creditors of the above-named bankrupts and approved by said Register; [8]

That under said law, it is the duty of said Register to make a memorandum in a book provided and kept for said purpose, of the dividend payable under said order to each and every of the creditors of said bankrupts as they appear of record in said matter in proportion to the claim of each as duly proved and on file;

That on or about the said 31st day of August, 1910, said Milton J. Green, as provided by law made up said dividend book and that there appeared in said book as No. 59, Cresta, Tomaso, San Francisco, Cal., amount allowed \$1050, dividend 24% \$252.00;

That upon receipt of said book from said Register, it was the duty of said assignees to pay said dividends by drawing a check in favor of said claimant on The Bank of California National Association, in which bank said assignees are required by the rule of this

court to deposit all funds in their hands, for the amount of the dividend payable to such claimant;

That pursuant to said duty, check No. 59 was made payable to said Tomaso Cresta for the sum of \$252.00 and duly signed by said assignees and countersigned by the Register in Bankruptcy;

That, as will appear by the records in this matter, a very large proportion of said creditors employed attorneys at law to appear for them to care for their legal rights therein;

That A. D. Splivalo, an attorney at law, appeared in open court and at the hearings before the Register on several occasions as the attorney at law for said claimant, Tomaso Cresta, and for other creditors;

That when said dividend checks were ready for delivery to the various claimants said A. D. Splivalo appeared at the office of Pringle & Pringle, the attorneys for said assignees [9] and said attorneys delivered said check No. 59 payable to Tomaso Cresta, to said A. D. Splivalo as the attorney at law for Tomaso Cresta, taking said Splivalo's receipt in writing for said check;

That said check was paid by The Bank of California, National Association, and thereafter returned to said assignees cancelled;

That on the back of said check is endorsed "Madelina Cresta (her mark) Executrix of the Estate of Tomaso Cresta, Deceased. Witness A. D. Splivalo, M. J. Baggett."

Also; "All previous endorsements guaranteed, pay to Crocker National Bank, or order, Banca Popolare Operaia Italiana, Commercial Account, by

F. M. Belgrano, Cashier;”

Also; “Pay only through clearing house, Sept. 12, 1910, The Crocker National Bank of San Francisco, No. 21;”

That thereafter on the same day, through the San Francisco Clearing House, The Bank of California, National Association, by reason of said previous endorsements and not otherwise, paid the amount of said check to said Crocker National Bank and deducted the amount thereof to wit, the sum of \$252.00 from the amount on deposit with it to the credit of said assignees in the above-entitled matter, cancelled said check and returned it with many other dividend checks and a statement to the assignees;

Further answering said petition, said assignees show;

That A. B. Kreft was on the 11th day of May, 1911, the duly appointed, constituted and acting Register in Bankruptcy under the above-mentioned law of Congress in the above-entitled matter;

That on said day a dividend of seven and one-half ($7\frac{1}{2}$) per cent was declared at a meeting of the creditors of [10] the above-named bankrupts and approved by said Register;

That under said law, it is the duty of said Register to make a memorandum in a book provided for said purpose of the dividend payable under said order to each, and every of the creditors of said bankrupts as they appear of record in said matter in proportion to the claim of each as duly proved and on file;

That on or about the said 31st day of August, 1910, said A. B. Kreft as provided by law made up said

dividend book and that there appeared in said book as No. 59, Cresta, Tomaso, San Francisco, Cal., amount allowed \$1050, dividend seven and one-half per cent ($7\frac{1}{2}\%$) \$78.75;

That upon receipt of said book from said Register, it was the duty of said assignees to pay said dividend by drawing a check in favor of said claimant on The Bank of California, National Association, in which bank said assignees are required by the rule of this Court to deposit all funds in their hands, for the amount of the dividend payable to such claimant;

That pursuant to said duty, check No. 59 was made payable to said Tomaso Cresta for the sum of Seventy-eight Dollars and Seventy-five Cents (\$78.75) and duly signed by said assignees and counter-signed by the Register in Bankruptcy;

That as will appear by the records in this matter, a very large proportion of said creditors employed attorneys at law to appear for them to care for their legal rights therein;

That A. D. Splivalo, an attorney at law, appeared in open court and at hearings before the Register on several occasions as the attorney at law for said claimant, Tomaso Cresta, and for other creditors;

That when said dividend checks were ready for delivery [11] to the various claimants said A. D. Splivalo appeared at the office of Pringle & Pringle, the attorneys for said assignees and said attorneys delivered said check No. 59 to said A. D. Splivalo as the attorney at law for Tomaso Cresta, taking said Splivalo's receipt in writing for said check;

That said check was paid by the Bank of Cali-

fornia National Association, and thereafter returned to said assignees cancelled;

That on the back of said check is endorsed, "Tomaso Cresta, by J. Cresta, assignee." "A. D. Splivalo."

Also; "All previous endorsements guaranteed, pay to Crocker National Bank, or order, Fugazi Banca Popolare Operaia Italiana, Commercial account, by F. M. Belgrano, Cashier." That thereafter and below said foregoing endorsement, said Crocker National Bank placed thereon its endorsement as follows:—"Pay only through clearing house, June 1st, 1911, The Crocker National Bank of San Francisco, No. 21."

That thereafter on the same day, through the San Francisco Clearing House, The Bank of California, National Association, by reason of said previous endorsements and not otherwise, paid the amount of said check to said The Crocker National Bank and deducted the amount thereof, to wit, the sum of Seventy-eight Dollars and Seventy-five Cents (\$78.75) from the amount on deposit with it to the credit of said assignees in the above-entitled matter.

Further answering said petition the assignees allege that they have no information or belief upon the subject sufficient to enable them to answer and placing their denial on that ground, they deny that the petitioners are the heirs of said Tomaso Cresta, or that Tomaso Cresta is dead, or that his Will was probated in the City and County of San Francisco, [12] as set forth in said petition, or that said Tomaso Cresta left a last Will and Testament;

Said assignees further deny that the checks above described were carelessly or without sufficient precaution or inquiry on their part delivered to any party or parties not entitled thereto or unknown to them, but on the contrary allege that said checks were duly and regularly delivered as aforesaid to the attorney at law appearing of record for the original claimant in said matter, and that they were paid by the depository of said assignees in the usual course of its business, to an intermediate holder and endorser of said checks.

WHEREFORE, the assignees in the above-entitled matter show as above set forth, that said petitioners are not entitled to any relief from them as such assignees or from them personally or from this estate in bankruptcy, or from the Honorable District Court of the United States, for the Northern District of California, First Division, and they pray that the petition be dismissed by said Honorable Court.

E. J. PRINGLE,

Attorney for said Assignees.

State of California,
City and County of San Francisco,—ss.

T. V. Maxwell, being duly sworn deposes and says: That he is one of the assignees in the above-entitled matter; that he has read the foregoing answer to petition of Frank Cresta, et al for relief, and that the same is true according to his knowledge and belief, except as to those matters which are stated on information and belief, and as to those matters he believes it to be true.

T. V. MAXWELL.

Subscribed and sworn to before me this 9th day of May, 1914.

[Seal]

W. W. HEALEY,
Notary Public in and for the City and County of San Francisco, State of California. [13]

Received copy of within answer this 11th day of May, 1914.

T. Z. BLAKEMAN,
Attorney for Petitioners.

[Endorsed]: Filed May 12, 1914. At 10 o'clock and 30 min. A. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [14]

In the District Court of the United States for the Northern District of California, First Division.

In the Matter of the Estate of DOMINGO GHIRADELLI, et al., in Bankruptcy.

Demurrer of the Petitioners Catherina Polostrini et al. to the Answer of the Assignees.

Now come Catherina Polostrini, Frank Cresta, Rosie Paravagna, Eliza Gotelli, Louise Cresta, Teresa Capurro and Catherina Polostrini as administratrix of the estate of Giovanni Brignoli, deceased;

And demur to the Answer of T. V. Maxwell, C. K. McIntosh and J. L. Radovich, Assignees, to the petition of the petitioners in the above-entitled matter; and for cause of demurrer state that the said answer does not state facts sufficient to constitute any defense to said petition;

T. Z. BLAKEMAN,
Attorney for Petitioners.

I hereby certify that, in my opinion the foregoing demurrer is well founded in point of law.

T. Z. BLAKEMAN,
Attorney for Petitioners.

[Endorsed]: Filed Aug. 18, 1914. 2 P. M. A.
B. Kreft, Register in Bankruptcy. [15]

*In District Court of the United States, Northern
District of California, First Division.*

BEFORE ARMAND B. KREFT, REGISTER IN
BANKRUPTCY.

No. 726.

In the Matter of DOMINGO GHIRADELLI and
ANGELO MANGINI, Copartners Transact-
ing Business Under the Firm Name of D.
GHIRADELLI & COMPANY and Individ-
ually, in Bankruptcy.

Report of Register on Special Reference.

To the Honorable MAURICE T. DOOLING, Judge
of the District Court of the United States, in
and for the Northern District of California:

The undersigned, register in bankruptcy, to whom
on the 4th day of August, 1914, was referred
the petition "for relief by Catherina Polostrini,
Frank Cresta, Rosina *alias* Rosie Paravagna, Eliza
Gotelli, Louisa Cresta and Teresa Capurro, and
Catherina Polostrini as the administratrix of the es-
tate of Giovanni Brignoli, deceased, as heirs of one
of the original claimants, Tomaso Cresta, in this
matter; likewise the petition of G. B. Dagnino, Ad-
ministrator of the estate of G. Dagnino, deceased,

for the payment of dividends set apart to the original claimant G. Dagnino, in this matter; likewise the third account and report of the assignees and their petition for settlement of the same and for the foreclosure of the rights of all persons to the unclaimed dividends in their hands and for the declaration of a fifth and final dividend and for compensation to such assignees and to their attorneys," respectfully certifies and reports; [16]

* * * * *

Petition of Catherina Polostrini et al.

In regard to the petition of Catherina Polostrini et al., the facts are sufficiently set forth in the petition and the answer filed thereto by the assignees. The answer is endorsed: "Answer to Petition of Frank Cresta et al for Relief," filed May 12, 1914, the matter having been submitted upon the facts stated in the petition and the answer and the record on file in this matter. The substance of the matter is that petitioners claim that they were entitled to the dividends paid upon the claim of Tomaso Cresta being represented by one dividend check dated August 1st, 1910, drawn in favor of Tomaso Cresta for \$252, signed by the assignees and countersigned by Milton J. Green, then register in bankruptcy, and one check dated May 11, 1911, drawn in favor of Tomaso Cresta for \$78.75, signed by the assignees and countersigned by myself as register. The answer alleges that both of these checks were delivered to A. D. Splivalo, an attorney-at-law who appeared as attorney for said Tomaso Cresta; that subsequently said

checks were paid by the Bank of California National Association, ^{the} depository of the funds of this estate. The answer refers to the various endorsements appearing upon the checks, A. D. Splivalo being one of the endorsees.

T. Z. Bluman, attorney for the petitioners, filed a demurrer to the answer of the assignees. This demurrer was overruled by me, and the matter was then submitted as aforesaid. Said A. D. Splivalo is dead.

No appearance was made in these proceedings by said petitioners or on their behalf prior to the delivery by the assignees of said checks to said Splivalo. As the record then stood, there was no paper then on file, or appearance herein, to show that any person other than the original claimant, claimed said dividends. The moneys represented by said checks have been withdrawn from the [17] funds of this estate. No power of attorney is on file herein authorizing said A. D. Splivalo to relieve payment of dividends payable to Tomaso Cresta. The checks, however, were not drawn to said Splivalo, but were drawn in the name of the claimant. In my opinion the assignee could properly deliver a check drawn in the name of the claimant, to an attorney-at-law who appeared in the proceedings, stating that he represented said claimant, the assignees at said time of delivering the checks having no notice or knowledge of other claimants to said dividends. The depository upon whom the checks were drawn, so far as the assignees were concerned, has been given no authority to pay said checks to any person other than the payee named therein, Thomaso Cresta. If the checks have

been improperly paid the liability rests upon either the endorsees or the Fugazi Banca Popolara Operata Italiana, through which bank said checks passed before being presented to the depositary of the estate, the Bank of California, N. A., or upon said depositary. As to where such liability rests, I express no opinion. Certainly said dividends cannot again be paid out the assets of this estate.

* * * * *

[Endorsed]: Filed Feb. 4, 1915. At 4 o'clock and 30 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [18]

(Objections of Petitioners, C. Polostrini et al., to the Answer of the Assignees.)

In the District Court of the United States for the Northern District of California, First Division.

In the Matter of the Estate of DOMINGO GHIRADELLI, et al., Bankrupts, in Bankruptcy; FRANK CRESTA et al., Petitioners.

Now come Frank Cresta, Catherina Polostrini, Rosie Paravagna, Eliza Gotelli, Louisa Cresta, Teresa Capurro and Catherina Polostrini, as Administratrix, etc., and object to the report of the Referee, A. B. Kreft, filed herein on Feby., 1915, insofar as said Referee reports adversely upon and denies the petition of said petitioners; and for grounds of objection state the following:

1. The denial of the petition was against and contrary to the law;
2. The denial of said petition is in conflict with

the facts in the record of the estate and case, and in conflict with and against the admitted facts as shown by the report of said Referee and the records of said estate;

3. That under the law and the facts as shown by said report of said Referee and the facts shown by the records of the estate and before the Court the said petitioners were and are entitled to an order upon the said assignees for the payment to petitioners of the claims made in their said petition.

Wherefore the petitioners pray that the said report of said referee in so far as it denies the said claims of these petitioners be vacated and set aside and that the Court make *its directing* the payment of petitioners said claims with interest.

Dated this, the 12th day of February, 1915.

T. Z. BLAKEMAN,
Attorney for Petitioners.

[Endorsed]: Filed Feb. 13, 1915. At 10 o'clock and 30 min. A. M. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [19]

**[Order Confirming Report of Register as to Claims
of G. Dagnino and Tomaso Cresta, etc.]**

At a stated term of the District Court of the United States, for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Friday, the 26th day of March, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable M. T. DOOLING, Judge.

No. 726.

In the Matter of D. GHIRARDELLI, in Bankruptcy.

In this matter, the Court this day filed Opinion and ordered that the Report of Register on Special Reference as to the claims of G. Dagnino and Tomaso Cresta be, and the same is hereby, confirmed. The amount due G. Dagnini will be withheld from distribution and further effort made to discover his heirs—through investigations in Calaveras County for information as to the heirs of Serafino Gorsiglia, and that the order of February 6th, 1915, partially approving report of Register be, and the same is hereby modified as to the claim of Dagnino. [20]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing 20 pages,

numbered from 1 to 20, inclusive, to contain full, true, and correct copies of certain records and proceedings in the matter of D. Ghirardelli, in Bankruptcy, No. 726, as the same now remain on file and of record in this office; said copies having been prepared pursuant to and in accordance with "Amended Praecipe" (copy of which is included in the foregoing transcript) and the instructions of T. Z. Blake-man, Esquire, Attorney for Petitioners herein.

I further certify that the cost for preparing and certifying the foregoing copies is the sum of Ten Dollars and Eighty Cents (\$10.80), and that the same has been paid to me by said attorney for petitioners.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said District Court this 27th day of September, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

CMT.

[Ten Cents Internal Revenue Stamp. Canceled
9/27/15. C. W. C.] [21]

[Endorsed]: No. 2597. United States Circuit Court of Appeals for the Ninth Circuit. Frank Cresta, Louisa Cresta, Catharina Polostrini, Rosina Paravagna, Eliza Gotelli and Teresa Capurro, Petitioners, vs. T. V. Maxwell, C. K. McIntosh and J. L. Radovich, Assignees, Respondents. In the Matter of the Estate of Domingo Ghiradelli and Angelo Mangini, Copartners Transacting Business Under

the Firm Name of D. Ghiradelli & Co., and Individually, Bankrupts. Transcript of Record in Support of Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Northern District of California, First Division.

Filed September 27, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.